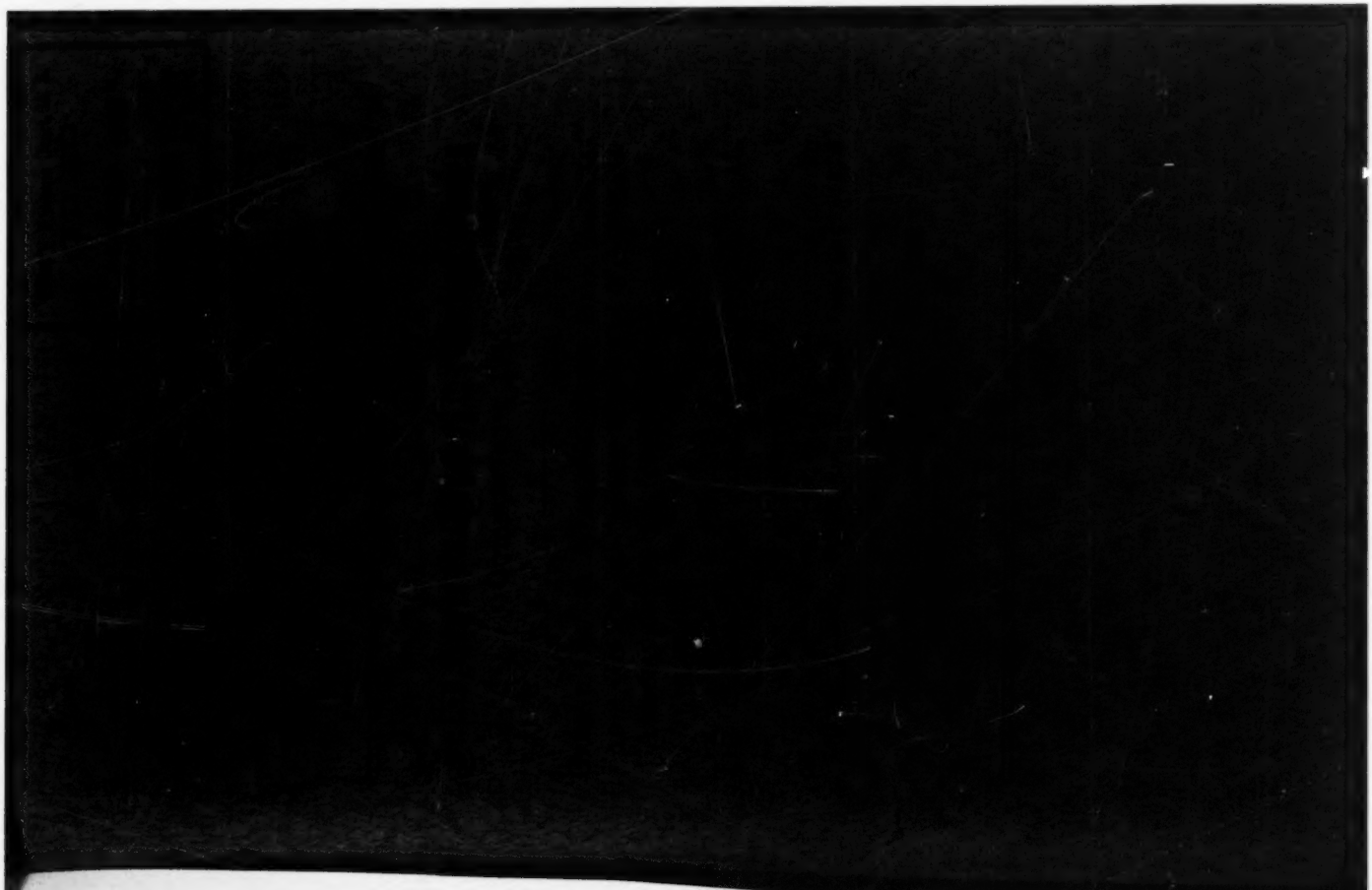

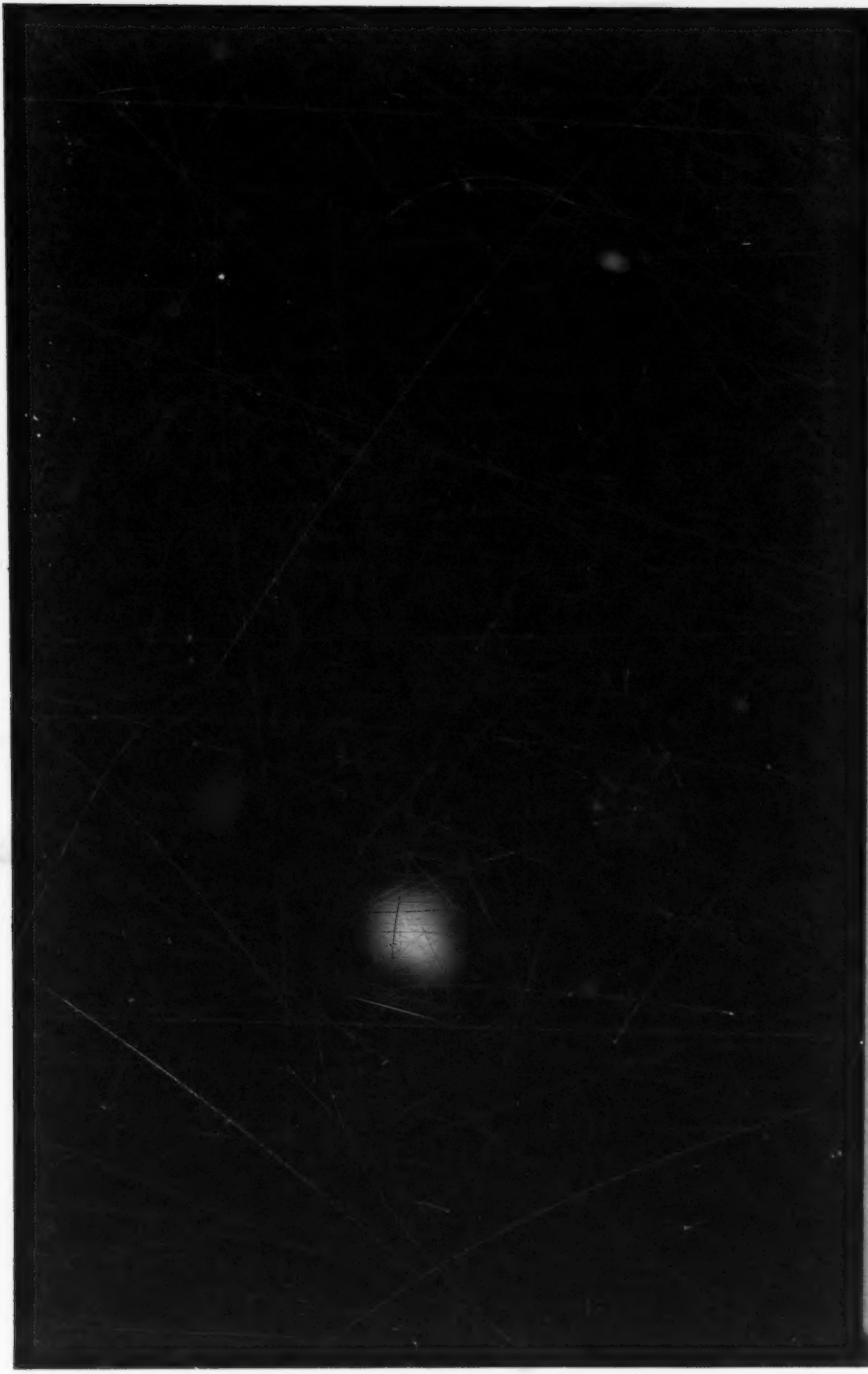

INDEX

CITATIONS

Cases:

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 934

GREENE COUNTY NATIONAL FARM LOAN ASSOCIATION, HAMBLEN COUNTY NATIONAL FARM LOAN ASSOCIATION, ET AL., PETITIONERS

v.

THE FEDERAL LAND BANK OF LOUISVILLE, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENTS AND THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the United States District Court for the Western District of Kentucky (R. 403–417) is reported at 57 F. Supp. 783. The opinion of the United States Circuit Court of Appeals for the Sixth Circuit (R. 438–448) is reported at 152 F. 2d 215.

JURISDICTION

The judgment of the circuit court of appeals was entered on December 13, 1945 (R. 437). The petition for a writ of certiorari was filed on

March 11, 1946. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the plan adopted by the directors of the respondent Land Bank, and approved by the Farm Credit Administration, for the rehabilitation and consolidation of the national farm loan associations in the farm credit district serviced by the Bank, involves an improper use of the Bank's corporate funds warranting the grant of equitable relief.

STATUTE INVOLVED

The statute involved is the Federal Farm Loan Act, as amended (39 Stat. 360, 12 U. S. C. 636, *et seq.*), the most relevant portions of which are set forth in the Appendix, *infra*, pp. 28–32.

STATEMENT

1. THE NATURE OF THE CASE

This is a representative stockholders' action, originally commenced by petitioners and two other national farm loan associations located in the fourth farm credit district,[1] to enjoin the Federal Land Bank of Louisville (the Bank) and its

[1] By resolutions of their respective boards of directors (R. 425–426, 426–427) two of the four original plaintiff associations disassociated themselves from this proceeding following dismissal of the action by the district court.

directors from putting into operation a plan, alleged in petitioners' complaint to involve an "illegal and misuse of corporate funds" of the Bank (R. 7), for the rehabilitation and consolidation of the national farm loan associations of the fourth farm credit district. Prior to the commencement of petitioners' action by the filing of a complaint on January 5, 1944 (R. 1–17), this plan had been approved by unanimous vote of the Bank's directors, by the Farm Credit Administration, and by over 80% of the fourth district farm loan associations (R. 344). Expenditures had been made by the Bank pursuant to the plan in the amount of $979,144.80 (R. 26). With respect to this sum, which, under the provisions of the plan hereinafter detailed, had been paid to certain fourth district associations other than petitioners, petitioners' amended complaint (R. 18–19, 88–89) prayed that the Bank's directors be held personally accountable to the Bank, or, alternatively, that the Bank be required to pay an equalization dividend to the non-recipient associations.[2]

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[2] Prior to the amendment of the complaint seeking an equalization dividend, the complaint, upon an allegation that the Bank's financial condition was such that a dividend should be paid its stockholders, prayed that a mandatory injunction issue compelling the payment of a *pro rata* dividend to all stockholders (R. 8). No question, however, is here raised by petitioners concerning the district court's refusal to issue such process, nor did petitioners press for this relief in the district court (R. 417).

2. THE PARTIES

The complaint as first amended (R. 1–17, 18–19), was directed against the Bank, its directors, and the Farm Credit Administration. Upon motion (R. 75), granted by the district court, the Farm Credit Administration was dismissed as a party defendant on grounds of sovereign immunity (R. 76–77). The complaint was again amended by leave of court (R. 87) to include as defendants certain officials of the Farm Credit Administration (R. 88–89). Service of process upon these officials was not effected. On April 21, 1944, the United States filed its suggestion of interest in the matter (R. 79–85) and was permitted by the court to appear and participate in the proceedings (R. 86–87).

The petitioners and the respondent land bank for the fourth farm credit district are corporations, as are all Federal Land Banks and national farm loan associations, organized under the Federal Farm Loan Act of July 17, 1916, 39 Stat. 360, 12 U. S. C. 636, *et seq.* Both land banks and associations are instrumentalities of the Federal Government providing the principal machinery for achieving the Act's objective—the making of long-term farm mortgage loans on reasonable terms to qualified owners or prospective purchasers of agricultural lands. *Smith* v. *Kansas City Title & Trust Co.*, 255 U. S. 180; *Federal Land Bank of Columbia* v. *Gaines*, 290 U. S. 247; *Fed-*

eral Land Bank of St. Louis v. *Priddy,* 295 U. S. 229; *Knox Farm Loan Ass'n* v. *Phillips,* 300 U. S. 194; *Federal Land Bank of St. Paul* v. *Bismarck Lumber Co.,* 314 U. S. 95. The banks and associations are presently under the supervision of the Farm Credit Administration, herein referred to as the supervising agency, which is a part of the Department of Agriculture.[3]

The respondent directors of the Bank are selected in accordance with the provisions of the Act as amended by the Farm Credit Act of 1937, 50 Stat. 703, 12 U. S. C. 640 b–f, 677a, 1022, 1131, 1134. Three of the seven members of the board are appointed by the supervising agency or officials of that agency, and a fourth is chosen by the agency from persons nominated by the farm loan associations of the farm credit district involved. Of the remaining three directors, one is elected by the national farm loan associations of the district, and the remaining two are chosen by other credit instrumentalities operating in the district.[4] Together, these officials

[3] The banks and associations were originally placed under the supervision of the Federal Farm Loan Board within the Department of Treasury, Section 3, 12 U. S. C. 652. The functions of the Board were transferred to the Farm Credit Administration, as an independent agency, by Executive Order No. 6084 (12 U. S. C., note preceding Section 636). The Administration was transferred to the Department of Agriculture by Reorganization Plan No. 1, Section 401, effective July 1, 1939 (5 U. S. C. 133t note).

[4] See, particularly, Section 5 (b) of the Farm Credit Act of 1937, 50 Stat. 704, 12 U. S. C. 640b.

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constitute the district farm credit board and, by virtue of their membership on the board, become *ex officio* the board of directors of the land bank in the district involved. Act of 1937, *supra*, Section 7 (b), 12 U. S. C. 677a.

3. THE PLAN

Background.—Petitioners' stock interests in the Bank have been acquired—as have those of the other 432 fourth district associations existing at the time of adoption of the plan—solely as a result and in the course of their operations under the statutory scheme.[5] A farmer seeking a loan from the Bank's funds makes application for such loan, which under the Act must be secured by a first mortgage, through a national farm loan association operating in the designated subdivision of the farm credit district in which his lands are located.[6] As a required condition to the approval of his application under the Act he must

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[5] Petitioners hold approximately 5,000 shares or somewhat less than 0.4 of 1% of the Bank's outstanding stock of approximately 1,500,000 shares. Except for some 2,000 shares held by individual borrowers, the remainder of the stock is held by other fourth district associations (R. 149–151, 242).

[6] The farmer may borrow directly from the Bank only when his lands are located in an area not served by an association or where the association is insolvent and the Bank is therefore unable to accept applications from such associations. Section 7 as amended, 12 U. S. C. 723 (a). Such direct loans carry a higher interest rate than loans made through associations. 12 U. S. C. 723 (b).

agree to purchase shares of stock in the association at their $5 par value in an amount equal to 5% of the loan amount. Section 8, 12 U. S. C. 731, 733. In turn, the association is required to endorse the farmer's mortgage note, made payable to the Bank, and also to devote the proceeds from the sale of its stock to the farmer to the purchase of an equal number of shares of the Bank's $5 capital stock. Section 7, 12 U. S. C. 721. The stocks so acquired are automatically pledged as security for the loan—that of the farmer in the association to the association as security against the latter's endorsement liability on the loan, and stock of the association in the bank to the bank as security for repayment of the loan. These holdings are automatically retired upon repayment of the loan in full. The par value of the association's stock holding in the Bank thereupon becomes payable to the association, subject, however, to the right of the Bank to a set-off against the amount so payable for any indebtedness of the association to the Bank. In the absence of such indebtedness, the association pays the borrower the par value of his retired stock in the association. Where, however, the Bank has withheld from the association the proceeds of its retired stock, the association is unable to pay the borrower the par value of his original stock purchase in the association. Instead the association issues to the borrower a

stock retirement certificate giving the borrower the right to share, to the extent of his original stock subscription, in the net assets of the association after satisfaction of all other association obligations.[7]

Despite the adoption of numerous measures by the Farm Credit Administration and the land banks to strengthen the financial position of national farm loan associations (See R. 100–101, 102–103, 105–106), the capital stock of many of the fourth-district associations was materially impaired at the time of adoption of the plan. The principal indebtedness of the impaired associations is to the banks on account of losses on loans made through and endorsed by the associations, and to farmers upon outstanding stock retirement certificates issued under the circumstances above outlined (R. 40–42, 97). Under a scheme of classification outlined (at R. 98–99), in the stipulation of facts and in the evidence upon which the case was submitted, 46 of the 434 fourth-district associations were Class 4 associations (having a total impairment of capital) and an additional 83 associations were in Class 3 (associations unable to meet current obligations without material but not entire impairment of capital). Class 3 and

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[7] The mechanics of the loan transaction set forth in the foregoing paragraph are those prescribed by the Act, principally by Sections 7, 8, and 9 thereof (12 U. S. C. 721, 733, 745); see also R. 97, 101–102, 124, 135–136. Concerning the Bank's right of set-off, see *Knox Farm Loan Ass'n* v. *Phillips*, 300 U. S. 194.

Class 4 associations are unable to accept applications for loans because of their insolvent condition (R. 99).

At the time the plan was submitted for adoption, the chartered territory of 318 of the 434 fourth-district associations overlapped the territory of other fourth-district associations (R. 100), and, as above stated, the financial condition of 129 of such associations was materially impaired.

Terms.—In its essentials, the plan (R. 32–74) provides for strengthening the fourth-district association system by reducing, through consolidations, the existing 434 associations to 94 for the declared purpose of establishing "an economic field pattern of associations financially sound and able to extend the credit services contemplated by the Farm Loan Act" (R. 33). Under the principal features of the plan the Bank will (1) cancel the indebtedness of impaired associations to it, (2) pay to each of the impaired associations an amount sufficient to pay off at par value their outstanding stock retirement certificates, and (3) establish reserves for all associations, whether impaired or not, to the extent necessary to cover presently forseeable losses. The total cost to the Bank is computed at $2,575,175.51 and it is estimated that consummation of the consolidations proposed in the plan will result in a monetary saving to the Bank of approximately $300,000 annually in operating economies—sufficient to absorb the entire cost of the plan over a period not exceeding

eight and one-half years. Under the plan, the Bank receives certain other monetary benefits and the agreement of the participating associations to the proposed consolidations (R. 64).[8]

Adoption and ratification.—The plan is not an innovation of the respondent Bank. Of the twelve land banks established by the Act (Section 4, 12 U. S. C. 671), the banks of Houston, Berkeley, Columbia, New Orleans, Omaha, St. Louis, St. Paul, and Wichita had developed, and other banks were studying, plans for their respective farm credit districts generally similar to the plan here involved at the time of the hearing in the district court (R. 112).[9] Each of these plans had received the approval of the Farm Credit Administration[10] (R. 112).

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[8] Under the Act, associations may voluntarily consolidate, with the approval of the supervising agency, but cannot be compelled to do so. Section 29, 12 U. S. C. 965.

[9] Of these plans, all but those of the Wichita and St. Louis banks were in actual operation prior to the hearing in the district court. The records of the Farm Credit Administration reveal that the Wichita plan and one involving the Bank of Spokane have since been put into operation. As of June 30, 1945, a total of 2,753 out of the 2,932 associations in the nine districts in which plans had become effective had executed agreements evidencing their participation and approval of the plans. 12th Annual Report of the Farm Credit Administration (1944–1945), H. Doc. 268, 79th Cong. 2d Sess., p. 25.

[10] The 12th Annual Report of the Farm Credit Administration (see preceding note) at pp. 25–27, as supplemented by records of the Administration, reveals the following with respect to the plans now in operation: Consolidations under

The Houston plan was the prototype of the plans adopted in the other districts. Prior to the adoption of the instant plan, a committee of the Bank's directors and officers personally visited Houston and intensively studied the plan there in operation (R. 111–112). The legal aspects of the plan were approved by counsel for the Bank and the Department of Agriculture (R. 112). The plan was formally approved by the Bank on July 19, 1943, and by the supervisory agency on July 31, 1943. The boards of directors of 80% of the fourth-district associations thereafter ratified the plan (R. 344). Upon the further acceptance, as prescribed by the Bank's directors (R. 107–108, 301), by direct vote of the stockholders of over 70% of the fourth-district associations, the plan was declared in effect on January 1, 1944, to be operative as of December 1, 1943 (R. 300–308).

4. PROCEEDINGS BELOW

Answers to the amended complaint were filed by the Bank (R. 24–74) and by its directors (R. 22,

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these plans (other than the instant plan) have reduced the number of associations in those districts from 2500 to 1025; the amount of money paid or to be paid the impaired associations of these districts is about $13,000,000; the cancelled indebtedness of impaired associations amounts to approximately $77,000,000, of which about $53,000,000 was uncollectable, and reserves for presently forseeable losses for all associations have been established in the approximate amount of $10,000,000.

23), averring generally that the plan had been adopted in pursuance of sound governmental and business policy. The answers of the directors additionally alleged their good faith in approving the plan "in the interest of the bank and of the national farm loan associations of the district" (R. 23).

The district court filed findings of fact, conclusions of law (R. 418–421) and an opinion (R. 403–417) on November 16, 1944, and, on November 25, 1944, it entered its decree dismissing the action (R. 421). A petition for rehearing (R. 422–424) was overruled without opinion on December 27, 1944 (R. 424). The court below affirmed on December 13, 1945 (R. 438–448).

ARGUMENT

The district court took the view that this case turned on corporate law, and particularly "a question which addresses itself directly to the judgment of [the Bank's] * * * Board of Directors." It concluded that the director's "decision in the matter, although not in accordance with the plaintiffs' views, appears sufficiently supported by good business judgment as to place it well beyond the scope of judicial review" (R. 417). The court below agreed with this holding upon the facts here involved and further held that there is here presented a supervening question—whether a court should interfere "with the functioning of a governmental agency engaged in

implementing a clearly defined public policy" (R. 446) whose challenged action, moreover, has been approved by "an agency of the United States * * * specifically authorized to exercise a general supervisory authority over federal land banks" (R. 447). Viewed in this aspect, we submit, petitioners could prevail only upon a showing that the adoption of the plan was arbitrary and capricious or clearly beyond the powers conferred upon the agencies involved. The holdings of both courts below upholding the plan are so clearly correct, we submit, that review by this Court is unwarranted.

1. The action of the Bank and the supervising agency, in approving the plan, can hardly be accurately characterized as arbitrary or capricious. The plan contains a statement of the benefits which will accrue to the Bank from its consummation (R. 45–51). It is noted (R. 34) that a decline in the mortgage loan account of the Bank is being experienced, and it is stated that the adverse impact of publicity concerning the failure of many of the associations to return to borrowers the value of their stock subscription upon the full repayment of loans cannot be borne indefinitely (R. 44, 49). Primary stress is placed, however, upon the advantages of consolidation and the consequent elimination of "insolvent associations, overlapping associations and associations which because of uneconomic setups

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are unable to render to the farmers of their territories the full service which the law contemplates the system shall render * * *" (R. 33).

Under the statutory scheme, the associations are indispensable functionaries of the bank. It is only in exceptional cases that the bank may make mortgage loans otherwise than through associations, and then only at higher rates of interest (see *supra,* note 6, p. 6). Consequently, the bank has always found it to its own interest to deal generously with associations. In the early years of the land bank system, the bank absorbed all losses for which an association was liable and has never sought judicial enforcement of the endorsement liability. Thereafter, an indemnity arrangement was evolved for the purpose of minimizing the shock of losses to associations. Under that agreement, associations were charged with loss on an endorsed loan only after disposition by the bank of a foreclosed farm, and were given credit for profits realized by the bank in other transactions. Allowances have also been made to associations in recognition of the advantage to the bank of promoting the fullest cooperation of associations in the performance of the services authorized by the Act to be performed by them. A part of these allowances was set apart for use in the payment of losses after exhaustion of other association assets. (R. 100–101.) It thus appears that the association plan now under consideration is distinguishable from previous arrangements

made by the bank with associations only in the greater scope and permanence of the benefits sought to be derived.

The permanence and substantiality of such benefits under the plan may not be doubted. Despite former palliatives, there were, as stated, *supra*, pp. 8–9, 129 associations in the fourth district with a substantial capital impairment on the date of adoption of the plan. And since such associations in Class 3 and 4 are not permitted to make new loans for the reason that the mandatory investment in the stock of such associations on the part of a new borrower would be unjustified, the system has had to adopt extraordinary remedies to avoid complete paralysis of the credit service in those districts (R. 99–100). The factors contributing to the impairment of these associations have been the prevailing overlapping of territories and the fact that the territories in themselves have been too small to permit proper distribution of risks. The plan proposes to reduce through consolidations the existing 434 fourth-district associations to 94 financially sound, self-sustaining, economic units. Consolidations are to take place only pursuant to agreements of constituent associations (R. 107, 281–296). The conclusion of the Bank and the supervising agency that a restoration to solvency of the impaired associations is a necessary prerequisite to the achievement of this end cannot be challenged as arbitrary or capricious. A consolidation of a

solvent association with an impaired association would be highly impracticable; a consolidation of impaired associations would be futile.

2. Petitioners have misconceived their status under the Act in asserting that the judicial sanction given the plan by the court below will create "doubt and suspicion as to the future of investments [and] inevitably result in economic chaos" (Pet. 17). As the court below properly observed, the stock holdings of borrowers and associations under the statutory scheme are acquired "by compulsion rather than by choice" (R. 446) and are not investments in any usual sense of the term. This is most graphically underlined by the fact that borrowers' purchases of stock in the associations, if permitted, and the resulting and corresponding purchases of bank stock by the associations, are made at par irrespective of the financial condition of the association or bank. The holdings are immobilized during the currency of the loans, and are automatically retired at par upon repayment of the loans, subject only to the Bank's right of set-off. There is plainly no element of speculation or investment involved; in order to become a stockholder in an association, one must also become a borrower from the bank at a statutory rate of interest. Section 8, 12 U. S. C. 733.

As was recognized at the Act's inception, the making of profits under the statutory scheme is entirely subordinate in purpose to the rendition

of an effective long-term credit service to farmers at the lowest possible cost.[11] To effectuate this purpose, the Federal government has liberally participated. The Government's original (see R. 105, 267), and subsequent (see R. 105–106, 269), subscriptions to the capital stock of the land banks did not carry dividend rights (Act of 1916, Section 5, 12 U. S. C. 694). Additionally, Congress, in the years 1933–1943, appropriated $268,166,000 to reimburse the land banks for a statutory reduction in interest rates; the respondent Bank partook of this appropriation to the extent of $26,529,206 (R. 106, 273). The primary public concern with the efficient operation of the farm credit system, thus illustrated, is further evidenced by the composition of the banks' board of directors (*supra,* pp. 5–6) and the vesting of general supervisory authority in the Farm Credit Administration.

In the light of the foregoing, it is submitted that the duty of the agencies administering the Act runs not only to present but also to future borrowers, and that petitioners and the farm loan associations generally are, therefore, congenitally subject to all measures reasonably calculated to achieve the primary objective of the Act—the rendition of a low-cost credit service to farmers on a basis approaching equality in so far as

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[11] 1st Ann. Rep. of Federal Farm Loan Board (1917), H. Doc. 714, 65th Cong., 2d Sess., p. 13; see also S. Rep. No. 144, 64th Cong., 1st Sess. (1916), p. 5.

feasible. Cf. Section 17, 12 U. S. C. 831 (b). Plainly, the plan cannot be successfully challenged as an abuse of discretion (the criterion ordinarly governing actions of this nature, see *Williams* v. *Green Bay & Western R. R. Co.,* No. 100, this Term and cases cited at note 10; cf. *Adams* v. *Nagle,* 303 U. S. 532, 540–542) when adopted in the interest of the Act's primary beneficiaries. See *Morrison* v. *State Bank of Wheatland,* 58 Wyo. 138, 166.

As of December 31, 1943, moreover, the respondent Bank's earned surplus amounted to over $12,000,000; it had a legal reserve of over $11,000,000, and reserves against specific assets amounting to approximately $4,000,000 (R. 242). Plainly the total initial cost of the plan (approximately $2,600,000, *supra* p. 9) will in no way jeopardize the ability of the Bank to repay its associations the par value of their stock holdings as they become due through repayment of farmer's loans, nor, for that matter, the payment of a reasonable dividend if authorized by the supervisory authority. Moreover, as has already been stated, *supra* pp. 9–10, the effectuation of the plan will result in economies which will repay the entire cost of the plan within a period not exceeding eight and one-half years.[12]

[12] Since loans through associations are for periods extending from 10–36 years (R. 193), it is apparent that only a relatively minor percentage of them will be repaid in the course of this period. This fact further evidences the complete ability of the Bank to retire its stock holdings as they become due under the Act during the period of recoupment.

3. As the district court noted, petitioners' major disagreement with the plan arises out of "their failure to receive immediate tangible benefits therefrom." (R. 416.) We believe that, in the absence of a specific statutory barrier in the way of the plan's consummation, such a grievance cannot serve to outweigh the factors already adverted to and upon which the respondents, reasonably and in good faith, relied in deciding upon the necessity for the plan. Petitioner's contention that the plan is prohibited by statute is without merit. Both of the lower courts properly held that Section 29, Appendix, *infra,* pp. 30–32, providing for the appointment of a receiver or conservator for insolvent associations, is permissive rather than mandatory, as is plain from the very language of the Section, and that such appointments are not the exclusive methods of dealing with insolvency of associations, let alone the broader problems with which the plan is designed to cope (R. 415–416, 448). Not only does the language of Section 29, by itself, serve as a sufficient foundation for this conclusion of the courts below, but practical considerations also would seem to make that view compelling. The appointment of a receiver to liquidate insolvent associations would, as the court below noted (R. 445), "present many practical difficulties," and would leave a host of dissatisfied former borrowers who have paid their loans in full but have not received the par value of their association

stock, thus materially impairing confidence in the system. There would seem to be no warrant, moreover, for the appointment of a conservator under Section 29, since there is nothing in the record to show that the difficulties of the associations arose out of incompetent management or that a conservator could accomplish, any more than the present management, the basic changes deemed necessary by the responsible agencies operating under the Federal Farm Loan Act. Surely, the remedies provided in Section 29 cannot be exclusive with respect to the Farm Credit Administration when they are not so with respect to the rights of creditors of federal land banks. See *Federal Land Bank* v. *Priddy,* 295 U. S. 229, 234.

Finally, if the plan is unassailable otherwise, Section 5, Appendix, *infra,* p. 29, providing for dividend distributions without preference, creates no infirmity. That provision would be relevant if the distribution of moneys contemplated could be justified as a dividend or not at all; petitioners cannot sustain their objection on a wholly unreal characterization of the distribution as a dividend, when it was not so intended and partakes of none of the characteristics thereof.

4. The Federal land banks are vested with all the usual powers of a private business corporation. They may regulate the manner in which their "general business" shall be conducted. They are empowered also "to acquire and dispose

of * * * property"—"to make contracts,"—"to borrow money, * * * give security therefor, and * * * pay interest thereon"—"to issue * * * bonds"—"to sue and be sued * * * as fully as natural persons," and to exercise "all such incidental powers as shall be necessary to carry on the business" of the banks. Sections 4 and 13, Appendix, *infra,* pp. 28–29, 29–30. It was contemplated, at the time of the organization of the Federal land bank system, that the banks would be privately owned and, consequently, they were given the same general corporate powers as the privately-owned joint stock land banks. See *Federal Land Bank* v. *Priddy,* 295 U. S. 229, 232, note 1.

The supervising agency, in addition to authority generally and specifically conferred upon it, is empowered "to exercise such incidental powers as shall be necessary or requisite to fulfill its duties and carry out the purposes" of the Act, and "to make such rules and regulations, not inconsistent with law, as it deems necessary or requisite for the efficient execution of the provisions" of the Act.[13]

The adoption of this and similar plans by other land banks (*supra,* p. 10) would seem clearly to constitute a regulation of the manner in which the "general business" of the Bank shall be conducted as well as an exercise of "such incidental

[13] See Section 17 of the Federal Farm Loan Act and Section 6 of the Act of January 23, 1932, 47 Stat. 14, Appendix, *infra,* pp. 29, 32.

powers as shall be necessary to carry on the business" of the banks. In the light of the difficulties the system is now experiencing, and its previous history, the establishment of sound self-sustaining associations is indispensable to the continued functioning of the Bank in the manner contemplated by the Act. Nor are petitioners correct in urging that the plan is *ultra vires* the power of the Bank because the disbursements thereunder constitute gifts to the impaired associations (Pet. 41). Adequate consideration for these disbursements is found in the agreements required of participating associations to the proposed consolidations, with all the attendant benefits to the Bank.[14] And, as above noted (*supra*, pp. 9–10), the actual economies effected by the consolidations will permit recoupment of the plan's total cost in a period not exceeding eight and one-half years. In the meantime, the Bank will be enabled to carry on its business through properly organized intermediaries, and to pay a large group of dissatisfied farmers who have not received repayment of their stock subscriptions although they have fully discharged their loan obligations.

Petitioners apparently concede (Pet. 36) that *Green Bay and Minnesota R. Co.* v. *Union Steamboat Co.*, 107 U. S. 98, would establish the power of a private corporation to engage in one of the

[14] See *supra*, note 8, p. 10.

three salient provisions of the plan—the establishment of reserves to be applied against foreseeable future association losses. Cf. also *Dunn* v. *McCoy*, 113 F. 2d 587 (C .C. A. 3). But it is apparent that the other features of the plan are also within the scope of a private corporation's implied powers. Even assuming, as petitioners contend, that the funds to be applied to the retirement of outstanding stock retirement certificates will not result in a calculable monetary benefit to the Bank, analogous measures adopted by private corporations are recognized as legitimate business expenses in the interest of "good will," even where the result of inaction in this field cannot be shown, as it can here, to result in hostility to the enterprise.[15] The Bank's relinquishment of the right of set-off against the association's stock holding under the facts here presented is equally supportable upon the same theory and, independently, by numerous cases upholding, against the complaint of a stockholder, management de-

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[15] *American Rolling Mill Co.* v. *Commissioner of Internal Revenue*, 41 F. 2d 314 (C. C. A. 6); *Steinway* v. *Steinway & Sons*, 17 Misc. 43, 40 N. Y. S. 718; *Hawes* v. *Oakland*, 104 U. S. 450; *In re Wood's Estate*, 299 Mich. 635, 1 N. W. 2d 19; *Putnam* v. *Juvenile Shoe Corporation*, 307 Mo. 74, 269 S. W. 593; *American Nat. Assur. Co.* v. *Ricketts*, 230 Ky. 398, 19 S. W. 2d 1071; *Heinz* v. *National Bank of Commerce*, 237 Fed. 942 (C. C. A. 8); *Forbes Lithograph Mfg. Co.* v. *White*, 42 F. 2d 287 (D. Mass.); *Corning Glass Works* v. *Lucas*, 37 F. 2d 798 (App. D. C.), certiorari denied, 281 U. S. 742; *People* v. *Hotchkiss*, 136 App. Div. 150, 120 N. Y. Supp. 649.

terminations that the corporation's best interests will be served by declining either to assert claims held by, or to resist claims asserted against, the corporation.[16] The entire plan is fully supportable by the decisions upholding analogous measures adopted by private corporations for the assistance of allied operating units,[17] or for the

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[16](a) *Non-assertion of particular claims:—Hawes* v. *Oakland*, 104 U. S. 450, 462, claim of private water company for water supplied to a municipality; *Post* v. *Buck's Stove & Range Co.*, 200 Fed. 918 (C. C. A. 8), and *United Copper Co.* v. *Amalgamated Copper Co.*, 244 U. S. 261, claims of industrial companies for treble damages under Sherman Anti-trust Act; *Watson* v. *Consolidated Laundries Corp.*, 235 App. Div. 234, 256 N. Y. S. 891, claim of industrial company for damages in tort. See also *United States* v. *Union Pacific R. R. Co.*, 98 U. S. 569, 610–611.

(b) *Non-resistance to particular claims:—Hornstein* v. *Paramount Pictures, Inc.*, 37 N. Y. S. 2d 404, affirmed, 266 App. Div. 659, 41 N. Y. S. 2d 210, affirmed, 292 N. Y. 468, 55 N. E. 2d 741, claim against corporation by racketeers for "protection"; *Levine* v. *Behn*, 174 Misc. 988, 21 N. Y. S. 2d 805, 809, affirmed, 262 App. Div. 729, 28 N. Y. S. 2d 711, leave to appeal denied, 286 N. Y. 734, 36 N. E. 2d 918 (1941), claim against bank which was regarded by management as invalid.

[17] *General Inv. Co.* v. *Bethlehem Steel Corp.*, 248 Fed. 303 (D. N. J.), guarantee by parent company of bonds of subsidiary; *Blake* v. *Domestic Manuf'g Co.*, 64 N. J. Eq. 480, 38 Atl. 241 (1897), guarantee by manufacturing company of notes of customers and agents of interlocking trading company; *Howard* v. *Tatum*, 81 W. Va. 561, 94 S. E. 965 (1918); *Edwards* v. *International Pavement Co.*, 227 Mass. 206, 116 N. E. 266 (1917), financial assistance by corporate owner of patent to company manufacturing the patented article; *Henderson Tire & Rubber Co.* v. *Gregory*, 16 F. 2d 589 (C. C. A. 8), guarantee by a manufacturing company of commercial paper of interlocking sales company; *North*

extrication of the corporation from a situation imperiling continued successful operations. Cf. *Atherton* v. *Anderson,* 86 F. 2d 518 (C. C. A. 6), remanded, 302 U. S. 643, modified on other grounds, 99 F. 2d 883.

Petitioners seek to escape the force of these decisions by asserting that the Bank is not a "competitive business institution" (Pet. 40–41). The contention, if accurate, is hardly relevant. An effectuation of the purposes of the farm credit service "to provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, [and] to equalize rates of interest upon farm loans", etc.,[18] necessarily requires the adoption of what may be termed competitive business methods. Failure to remedy the existing situation would remove the liberalizing influence on the rates charged by

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American Life Ins. Co. v. *Remedial Finance Corp.*, 178 Okla. 248, 62 P. 2d 491 (1936), endorsement by insurance company of note of agent; *Marbury* v. *Kentucky Union Land Co.*, 62 Fed. 335 (C. C. A. 6), guarantee by timber company of construction bonds of railroad transporting timber products with which the company was authorized to consolidate; *Lyon, Potter & Co.* v. *First Nat'l Bank*, 85 Fed. 120 (C. C. A. 8), endorsement by industrial corporation of note of its selling agency; *First Nat. Bank of Fairfax* v. *Pacific Elevator Co.*, 159 Minn. 94, 198 N. W. 304 (1924), guarantee by elevator company of notes of a milling company in which it was interested as stockholder. See, also, *Green Bay and Minnesota R. Co.* v. *Union Steamboat Co.*, 107 U. S. 98, guarantee by railroad of gross earnings of steamboat company connecting with the railroad.

[18] 39 Stat. 360.

private credit agencies which *inter alia* Congress undoubtedly intended the system to exert. But assuming that petitioners' characterization of the Bank as "non-competitive" is in some measure accurate, the fact remains that the Act contains no hint of any restriction on its powers based on that circumstance. As shown heretofore, the Bank has the usual powers of a private corporation, and a corporate power is conferred in order that the corporate objective may be attained. Even a "non-competitive" enterprise will fall short of its purposes if adequate measures are not taken for the improvement and preservation of its business.

Finally, as was stressed by the court below, the adoption of the plan here challenged was approved by the Farm Credit Administration, which, as above pointed out, is vested with general supervisory authority over the land banks and associations. In such circumstances, any remaining doubt as to the power of the Bank under the Act to adopt the plan must be resolved in favor of its legality. "When dealing with such necessarily argumentative concepts as those of which the law of *ultra vires* is so largely composed, the responsible and pervasive practice of public officers bent on safeguarding the public interests ought to carry the day even were the issue more in doubt than we believe it to be." *Inland Waterways Corp.* v. *Young,* 309 U. S.

517, 525. Cf. *United States* v. *Midwest Oil Co.*, 236 U. S. 459, 473; *Skidmore* v. *Swift & Co.*, 323 U. S. 134, 139–140.

CONCLUSION

The decision below is correct and no conflict exists. Indeed, no litigation has arisen out of similar plans adopted and put into operation by eight other Federal Land Banks. See *supra*, p. 10, note 9. We respectfully submit that the petition for a writ of certiorari should be denied.

J. HOWARD MCGRATH,
Solicitor General.
JOHN F. SONNETT,
Assistant Attorney General.
PAUL A. SWEENEY,
BONNELL PHILLIPS,
Attorneys.

W. CARROLL HUNTER,
Associate Solicitor, Department of Agriculture.

WILLIAM C. GOODWYN,
General Counsel, Farm Credit Administration of Louisville.

APRIL 1946.

APPENDIX

The Federal Farm Loan Act of July 17, 1916, 39 Stat. 360, as amended, 12 U. S. C. 636, *et seq.* provides, in most pertinent part, as follows:

SEC. 4. * * *

Upon duly making and filing such organization certificate the bank shall become, as from the date of the execution of its organization certificate, a body corporate, and as such, and in the name designated in the organization certificate, it shall have power—

First: To adopt and use a corporate seal.

Second: To have succession until it is dissolved by Act of Congress or under the provisions of this Act.

Third: To make contracts.

Fourth: To sue and be sued, complain, interplead, and defend, in any court of law or equity, as fully as natural persons.

Fifth: To elect or appoint directors, and by its board of directors to elect a president and a vice president, appoint a secretary and a treasurer and other officers and employees, define their duties, require bonds of them, and fix the penalty thereof; by action of its board of directors dismiss such officers and employees, or any of them, at pleasure and appoint others to fill their places.

Sixth: To prescribe, by its board of directors, subject to the supervision and regulation of the Farm Credit Administration, by-laws not inconsistent with law, regulating the manner in which its stock shall be transferred, its directors elected, its officers elected or appointed, its property

transferred, its general business conducted, and the privileges granted to it by law exercised and enjoyed.

Seventh: To exercise, by its board of directors or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business herein described. [12 U. S. C. 676]

SEC. 5. * * *

Stock owned by the Government of the United States in Federal land banks shall receive no dividends, but all other stock shall share in dividend distributions without preference. * * * [12 U. S. C. 694]

SEC. 13. Every Federal land bank shall have power, subject to the limitations and requirements of this Act—

First: To issue, subject to the approval of the Farm Credit Administration, and to sell farm loan bonds. * * *

* * * * *

Fourth: To acquire and dispose of—

(a) Such property, real or personal, as may be necessary or convenient for the transaction of its business, which, however, may be in part leased to others for revenue purposes.

* * * * *

Seventh:—To borrow money, to give security therefor, and to pay interest thereon. [12 U. S. C. 781]

SEC. 17. The Farm Credit Administration shall have power—

* * * * *

(i) To exercise general supervisory authority over the Federal land banks, the national farm-loan associations, and the

joint stock land banks herein provided for.

(j) To exercise such incidental powers as shall be necessary or requisite to fulfill its duties and carry out the purposes of this Act. [12 U. S. C. 831]

SEC. 29. Upon receiving satisfactory evidence that any national farm loan association has failed to meet its outstanding obligations of any description the Farm Credit Administration may forthwith declare such association insolvent and appoint a receiver and require of him such bond and security as it deems proper: * * * Such receiver, under the direction of the Farm Credit Administration, shall take possession of the books, records, and assets of every description of such association, collect all debts, dues and claims belonging to it, and, with the approval of the Farm Credit Administration, or upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, on a like approval or order, may sell all the real and personal property of such association, on such terms as the Farm Credit Administration or said court shall direct. [12 U. S. C. 961]

* * * * *

No national farm loan association, Federal land bank or joint stock land bank shall go into voluntary liquidation without the written consent of the Farm Credit Administration, but national farm loan associations may consolidate under rules and regulations promulgated by the Farm Credit Administration. [12 U. S. C. 965]

* * * * *

Upon receiving satisfactory evidence that any national farm loan association has failed to meet its outstanding obligations of

any description, and that it will be to the best interests of its creditors and stockholders for the association to continue in business, the Farm Credit Administration may, in its discretion, in lieu of appointing a receiver as hereinabove in this Section provided, appoint a conservator for such association and require of him such bond and security as the Administration may deem proper. * * *

The conservator, under the direction of the Farm Credit Administration, may, when directed so to do, take possession of the books, records, and assets of every description of such association, and take such action as may be necessary to conserve such assets pending final determination of the financial condition of the association and the conditions under which it may be permitted to continue in business. Such conservator shall at the earliest practicable date make such investigations as shall be necessary to enable him to prepare an accurate report on the financial condition of such association. * * *

If said report is approved, in whole or in part, by the Farm Credit Administration, upon recommendation of the Federal land bank of the district said Administration shall then decide whether such association shall be permitted to pay off and retire its capital stock at its fair book value, upon full payment of the mortgage loans in connection with which such stock was issued originally, and to settle on the same basis the claims of any of its stockholders who have previously paid their loans in full, but have not received credit for, or the proceeds of their stock in such association. At the same time the Farm Credit Administration shall also decide whether it will permit said

association to admit new members pursuant to section 25 (b) of the Farm Credit Act of 1937. If the decision of said Administration is in the affirmative, it may terminate the conservatorship and turn the affairs of the association back to its board of directors. If said report is not approved or the decision of said Administration is in the negative, it may, in its discretion, terminate the conservatorship and permit such association to resume the transaction of its business subject to such terms, conditions, restrictions, and limitations as it may prescribe for the protection of the rights of creditors and stockholders, or said Administration may appoint a receiver for the association as elsewhere provided in this section.

* * * * *

In the event that the indebtedness, as determined by the conservator, of an association which has been under conservatorship pursuant to this section increases in excess of the earnings of such association, the Farm Credit Administration may, in its discretion, again appoint a conservator for the association, or it may appoint a receiver as elsewhere provided in this section. [12 U. S. C. 967]

Section 6 of the Act of January 23, 1932, 47 Stat. 12, 14, provides as follows:

The Farm Credit Administration is authorized to make such rules and regulations, not inconsistent with law, as it deems necessary or requisite for the efficient execution of the provisions of the Federal Farm Loan Act, and/or any Act or Acts amendatory thereof or supplementary thereto. [12 U. S. C. 665]

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